

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

CRL.A.No. 516 of 2007()

SC.127/2002 of ADDL.SESIONS COURT-II, KOZHIKODE
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APPELLANT: COMPLAINANT.

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SHRI C.M. NAZAR

RESPONDENTS: ACUSED.

BABU @ RAJEEVAN, S/O. BALAN, KODANCHERY.

BY

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION
ON 23/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B. Koshy & T.R. Ramachandran Nair, JJ.

Crl.M.A.NO.2791/2007 & Crl.A.No.516/2007

Dated this the 23rd day of March, 2007

JUDGMENT

Koshy, J.

This is a petition filed by the State for condoning the delay of 507 days in filing the appeal against an order of acquittal. The judgment of the trial court was pronounced on 14.12.2004 and certified copy was received by the State only on 12.4.2005. It is stated that file was submitted to the Director General of Prosecution on 27.10.2005 and after perusing the same it had been allotted to the Government Pleader for filing appeal. Govt. Pleader prepared the appeal on 26.6.2006 but it was filed only in December 2006. No valid reasons are stated for the long delay in filing the appeal. Since no satisfactory reasons are stated for condoning the delay, we are of the view that delay condonation petition and consequently the appeal are liable to be dismissed.

2. However, to avoid any traversity of justice, we have also looked into the records of the case. It was alleged by the prosecution that the accused was the foster son of Ayyappan and Ayyappan promised to transfer his house and property to the accused and his sister but Ayyappan made an

agreement to sell the property to P.W.3. Aggrieved by the above, on 31.5.2000 at about 5.30 p.m. while Ayyappan was sitting on a step near the door of his house, the accused came there and had thrown chilly powder on his face. The accused then stabbed Ayyappan with a dagger on his chest and abdomen. He succumbed to the injuries on 11.6.2000 while undergoing treatment in the Medical College Hospital, Kozhikode.

3. The prosecution mainly relied upon the motive element as well as the dying declaration made by Ayyappan. It is stated that Ayyappan himself gave Ext.P11 F.I. Statement and it was recorded by P.W.13. The F.I. statement is seen recorded at 12.15 p.m. on 1.6.2000, i.e. 12 hours after the surgery. P.W.19 who conducted the surgery, stated that the patient would regain full consciousness only after 20 to 24 hours and even thereafter he would be in sedation. Therefore the court disbelieved the version of the police that the deceased himself gave the F.I. statement and found that it was a concocted case. P.W.2 was one of the persons who had taken Ayyappan to the Medical College Hospital and P.W.1 had visited Ayyappan at the hospital immediately after his admission there. They were examined to prove that Ayyappan gave the dying declaration to them that accused stabbed him. But they became hostile. They only stated that Ayyappan sustained stab injuries and accused was not named. They also denied the

suggestion that they knew accused was the foster son of Ayyappan. The only evidence is the one recorded by P.W.19, the doctor. P.W.19 examined Ayyappan at 7.20 p.m. at the casualty and it was recorded that at that time the patient was gasping. His pulse and BP could not be recorded. It is further stated that at 8 p.m. the patient was answering to questions and he recorded the statement that the Ayyappan was stabbed by his foster son Babu and the operation was conducted thereafter. The trial court was of the opinion that it is not proved by the prosecution that even though it is stated that the foster son Babu stabbed him, it is not proved that accused is the foster son. The trial court also referred to the evidence of P.Ws.1 and 2 to show that there is no conclusive proof to show that accused is the foster son of the deceased. But P.Ws.1, 2, 3, 4 and 20 stated that accused is the foster son of Ayyappan. Their evidence was not believed by the trial court because they have no such case before the police. Apart from the above, we note that at the time of admission at 7.20 p.m. the patient was gasping even if it was difficult to take his pulse and BP. So, even though the doctor has recorded the statement of the deceased, it cannot be stated that he had got the capacity to make such a statement. This evidence is appreciated in the background that P.W.13 stated to have recorded a false F.I. statement stated to be from the deceased when he was unable to speak. The prosecution also

examined P.W.7 to show that chilly powder was purchased by the accused from him. But he denied the same and he was declared hostile.

4. To convict a person for a serious offence of murder, there should be strong circumstances and all the links in the chain should be proved. Here, we are of the opinion that prosecution was not able to prove the case merely on the basis of the dying declaration given to P.W.19 and accused is guilty and no one else is responsible for the crime. In any event, this is a possible finding and no grounds are made out for interference in an order of acquittal.

In the above circumstances, the delay petition and the appeal are dismissed.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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